

No. 15014

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

CHARLOTTE C. COHON, Transferee of the Es-
tate of Jennie Wolf, deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

MAY 24 1956

PAUL P. O'BRIEN, CLERK

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the
District of Oregon

Civil No. 7100

CHARLOTTE C. COHON, Transferee of the Es-
tate of Jennie Wolf, deceased, Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

PRE-TRIAL ORDER

At this time the above entitled cause came on for pre-trial before the undersigned Judge of the above entitled Court. Plaintiff appeared herein by S. J. Bischoff, her Attorney. Defendant appeared herein by and through C. E. Luckey and as its Attorney.

The following are the agreed facts:

I.

During the calendar years 1942 and 1943, and until her death on April 8, 1945, Jennie Wolf was a resident of the County of Multnomah, State of Oregon, and was then and until her death, a citizen of The United States of America.

II.

Jennie Wolf was a partner in the partnership of Alaska Junk Company during said years, having a one-fourth interest in said partnership, which partnership interest continued until the date of her

death; that plaintiff is the transferee of the estate of Jennie Wolf, deceased, by virtue of the provisions of the will of Jennie Wolf wherein her interest in the said partnership vested in her three children, the plaintiff herein, and Monte L. Wolf and Blossom M. Grayson, each of them acquiring a one-third in said partnership interest of said Jennie Wolf, deceased.

III.

At all the times from September 1, 1947, to and including October 31, 1952, Hugh H. Earle was the duly commissioned, qualified and acting United States Collector of Revenue for the District of Oregon and the said Hugh H. Earle is no longer in office and was not in office at the time of the commencement of this action.

IV.

At all the times from July 17, 1933, to and including August 31, 1947, James W. Maloney was the duly commissioned, qualified and acting United States Collector of Internal Revenue for the District of Oregon and the said James W. Maloney is no longer in office and was not in office at the time of the commencement of this action.

V.

During all the times mentioned herein, the decedent Jennie Wolf kept her personal books and made and filed her income and victory tax returns on the cash receipts and disbursements and calendar year basis.

VI.

During the taxable years 1942 and 1943, while said Jennie Wolf was a member of said partnership of Alaska Junk Company, the said partnership kept its books of account and filed its partnership income tax information returns on a calendar year and accrual basis.

VII.

For the calendar year 1942, Alaska Junk Company reported gross sales in the amount of \$2,038,-384.76 on its partnership income tax information return filed on or about March 15, 1943. Included in said gross sales, were certain sales of merchandise made and delivered to a corporation known as "Oregon Electric Steel Rolling Mills" in the sum of \$243,975.86, the amount of said items being carried on the books of said Alaska Junk Company as accounts receivable.

VIII.

The net income, as reported on the information tax return of Alaska Junk Company for 1942, was in the amount of \$236,123.45 of which amount, the deceased, Jennie Wolf, reported on her individual income and victory tax return the sum of \$54,-030.86, said tax return being filed on or before March 15, 1943, and the said Jennie Wolf paid the said taxes due thereon to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

IX.

For the calendar year 1943, Alaska Junk Company reported gross sales in the amount of \$1,463,-

365.76 on its partnership income tax information return filed on or before March 15, 1944. Included in said gross sales, was merchandise sold and delivered to the said corporation known as "Oregon Electric Steel Rolling Mills" in the sum of \$103,-365.76, the amount of said item being carried on the books of said Alaska Junk Company as an account receivable.

X.

The net income as reported on the information tax return of the Partnership Alaska Junk Company for the calendar year 1943 in the amount of \$246,055.71 of which the deceased Jennie Wolf reported on her individual income and victory tax return, the sum of \$56,613.93, said tax return being filed on or before March 15, 1944, and said Jennie Wolf paid the taxes due thereon on or before said date to said James W. Maloney, the then Collector of Internal Revenue for the District of Oregon.

XI.

In computing the net income of Alaska Junk Company for the calendar year 1943, a loss was claimed on its income tax information return of \$202,350.60 for bad debts on account of the aforementioned merchandise sold and delivered to said Oregon Electric Steel Rolling Mills, the amount of which said items had theretofore been carried on the books of the Alaska Junk Company as accounts receivable.

XII.

On or about March 3, 1947, the Commissioner of

Internal Revenue determined that the aforementioned loss on account of merchandise sold and delivered to Oregon Electric Steel Rolling Mills constituted a capital contribution to said Corporation and was, therefore, not a proper bad debt deduction.

XIII.

On or about March 3, 1947, the Commissioner of Internal Revenue determined a deficiency in income and victory tax for the calendar year 1943 against plaintiff herein, Charlotte C. Cohon, as Transferee of the Estate of Jennie Wolf, by reason of the disallowance of the said bad debt deduction that had been taken on the information tax return of Alaska Junk Company.

XIV.

On June 2, 1947, the plaintiff, Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, filed her petition with The Tax Court of the United States in Docket No. 14278 contending that the determination of the Commissioner of Internal Revenue, to the effect that said accounts receivable of the Oregon Electric Steel Rolling Mills were in fact capital contributions, was erroneous. Upon hearing the matter, the Tax Court of the United States determined the issues in favor of the Commissioner of Internal Revenue and promulgated its finding of fact and opinion on July 14, 1949.

The Court withheld entry of its decision, pursuant to Rule 50 of its Rules of Practice, for the purpose of permitting the parties to submit compu-

tations of the proper tax liability pursuant to the Court's opinion. The Commissioner filed his computation on October 6, 1949, showing a total liability of \$42,273.99 due and owing by the transferees of the Estate of Jennie Wolf, deceased. On November 7, 1949, the plaintiff, Charlotte C. Cohon, as one of the transferees of the Estate of Jennie Wolf, filed her acquiescence in the computation submitted by the Commissioner. Thereafter, on November 9, 1949, the Court entered its final order and decision determining a deficiency on the part of the plaintiff, Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, in income and victory tax for the calendar year 1943, for one-third of the amount of \$42,273.99, being the amount of the deficiency assessed against the three transferees of Jennie Wolf by reason of the said determination.

Thereafter, on January 4, 1950, the plaintiff, Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, prosecuted an appeal from the decision of The Tax Court of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit rendered a per curiam opinion under date of July 24, 1950, affirming the decision of the Tax Court. On October 30, 1950, the plaintiff, Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, petitioned the Supreme Court of the United States for a writ of certiorari to review the judgment of the Court of Appeals. The Supreme Court denied certiorari on January 2, 1951 (340 U.S. 911).

The parties stipulate that the findings of fact and the opinion of the Tax Court and the per curiam

opinion and judgment of the Court of Appeals for the Ninth Circuit are to be considered as part of the evidence and record before this Court; that said findings of fact and opinions are reported in the report of the Tax Court proceedings entitled *Sam Schnitzer, et al vs. Commissioner of Internal Revenue* at 13 T.C. 43, and in the report of the Court of Appeals proceeding of the same name at 183 F. 2d, 70; and that said reports are hereby incorporated and made a part of this stipulation.

XV.

On December 30, 1949, plaintiff Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, paid the deficiency asserted as aforesaid and determined by the said judgment, to Hugh H. Earle, the then Collector of Internal Revenue for the District of Oregon, the amount so paid by plaintiff being \$14,091.33, being one-third of the total of the deficiency determined as against the three transferees of Jennie Wolf, deceased.

XVI.

By reason of the income and victory tax payments made on the original return of Jennie Wolf and the payments made on account of the deficiencies determined by the Commissioner of Internal Revenue and affirmed by The Tax Court of the United States as aforesaid, together with the interest on said deficiencies, the said taxpayer and her three transferees paid income and victory taxes, together with the interest on the deficiencies, in the amount of \$93,915.17 for the taxable year 1943.

XVII.

By virtue of the determination of the Commissioner of Internal Revenue, the decision of the Tax Court of the United States, the affirmance of that decision by the Court of Appeals for the Ninth Circuit and the denial of the petition for certiorari by the United States Supreme Court, as aforesaid, it has been adjudicated in effect that the merchandise sold and delivered by Alaska Junk Company to Oregon Electric Steel Rolling Mills were not sales but capital contributions.

As a result of said adjudication, it follows that the "sales" to Oregon Electric Steel Rolling Mills were erroneously carried on the books of the Alaska Junk Company as accounts receivable; they were erroneously included in the gross income of the partnership for 1942 and 1943; the income and victory taxes paid by the partners including Jennie Wolf on their distributive shares therefrom under the original returns, were erroneously paid; and the amounts of such "sales" should have been excluded from the gross income of Alaska Junk Company, thus reducing the amount of the net income reportable by said Alaska Junk Company, and thus reducing the amount of income reportable by the deceased, Jennie Wolf, on her individual income and victory tax return for the taxable year 1943.

XVIII.

On or about June 21, 1951, plaintiff Charlotte C. Cohon, as transferee of the Estate of Jennie Wolf, filed with the Collector of Internal Revenue for the

District of Oregon, on Form 843, a claim for refund of one-third of tax and interest, to-wit, one-third of the sum of \$43,738.35, together with interest thereon as provided by law, a copy of which claim is attached to the complaint herein. It is stipulated that the copy of the claim attached to the complaint herein is a true and correct copy of the claim filed as aforesaid and may be marked and admitted as "Plaintiff's Pre-trial Exhibit No. 1".

XIX.

On or about August 1, 1951, the Commissioner of Internal Revenue notified the plaintiff, as transferee of the Estate of Jennie Wolf, by registered mail, that her said claim for refund had been disallowed.

XX.

That the said sum of \$43,738.35 has not been repaid to the decedent Jennie Wolf and/or her transferees and/or the plaintiff herein.

XXI.

In its returns for the years 1942 and 1943, the partnership, Alaska Junk Company, reported sales, costs of sales, gross profits, other incomes, total incomes, deductions and net incomes as follows:

	1942	1943
Sales.....	\$ 2,038,384.76	\$ 1,463,363.19
Cost of Sales.....	1,331,840.34	521,662.19
Gross profits.....	\$ 706,544.42	\$ 941,701.00
Other income.....	2,410.12	4,782.31
Total Income.....	\$ 708,954.54	\$ 946,483.31
Deductions.....	(a) 472,831.09	(a) 700,427.60
Net income.....	\$ 236,123.45	\$ 246,055.71

(a) Total deductions claimed for 1942 and 1943 included bad debts in the respective amounts of \$1,971.24 and \$206,008.92.

XXII.

In computing the amount of the refund claimed by the plaintiff, as set forth in the claim referred to in paragraph XVIII, the plaintiff eliminated the merchandise sold and delivered to Oregon Electric Steel Rolling Mills in the amount of \$243,-975.86 and \$103,365.76 from the gross sales reported in the original returns of the partnership, as aforesaid, thus computing the refund on the basis of gross sales in the amount of \$1,794,408.90 and \$1,359,997.43 for the years 1942 and 1943, respectively.

XXIII.

In computing the amount of refund claimed by plaintiff, as set forth in the claim referred to in paragraph XVIII, the plaintiff used the same cost of sales reported in the original returns of the partnership, that is, \$1,331,840.34 and \$521,662.19 for the years 1942 and 1943, respectively. The plaintiff did not eliminate the cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills, that is, plaintiff did not reduce the cost of sales as reported in the original returns of the partnership by the actual cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills.

XXIV.

The parties stipulate that the merchandise sold and delivered to Oregon Electric Steel Rolling Mills for the years 1942 and 1943 the amounts of which

have been excluded from gross income in computing the refund claimed by the plaintiff, had a cost of \$159,389.43 and \$36,849.89, respectively.

XXV.

The difference in the amount of income and victory tax of the deceased Jennie Wolf, as reported on her original income and victory tax return for 1943, together with the deficiency and interest paid, as aforesaid, and the amount of income and victory tax for the taxable year 1943 after eliminating from gross sales of the partnership (Alaska Junk Company) the merchandise sold and delivered to Oregon Electric Steel Rolling Mills, is the sum of \$39,-075.29.

The difference in the amount of income and victory tax of the deceased, Jennie Wolf, as reported on her original income and victory tax return for 1943, together with the deficiency and interest paid, as aforesaid, and the amount of income and victory tax for 1943 after eliminating from gross sales of the partnership (Alaska Junk Company) the merchandise sold and delivered to Oregon Electric Steel Rolling Mills and the cost of said merchandise, is the sum of \$24,487.71.

The parties stipulate that the above computations are true and correct and that in the event the Court shall determine that the prosecution of this action is not barred by Section 322(c) of the Internal Revenue Code of 1939, or by the principle of *res adjudicata*, and/or the doctrine of collateral estoppel, the judgment to be entered in favor of the

plaintiff and the other two transferees of the Estate of Jennie Wolf, deceased, shall be in accordance with and for the amount of overpayment shown in whichever of the above computations is determined by the Court to be applicable under the circumstances, to-wit:

One-third of \$39,075.29 or \$13,025.09 for each of said transferees; or

One-third of \$24,487.71 or \$8,162.57 for each of said transferees,

as the case may be; (plus interest as provided by law).

XXVI.

That in the computation submitted by the Commissioner of Internal Revenue on October 6, 1949, pursuant to Rule 50 of the Tax Court's Rules of Practice, as indicated in paragraph XIV above, the amount of sales which the Tax Court concluded were capital contributions were not eliminated from the gross sales as originally reported by the partnership, nor was the cost of such sales eliminated from the cost of goods sold as originally reported by said partnership. That the plaintiff, as transferee of Jennie Wolf, deceased, on November 7, 1949, filed her acquiescence in the computation submitted by the Commissioner of Internal Revenue, and that on November 9, 1949, the Tax Court entered its final order and decision in the matter. A true and correct copy of said computation, acquiescence and decision is attached hereto, and it is stipulated that the same may be admitted in evi-

dence and marked as "Defendant's Pre-Trial Exhibit 1".

XXVII.

The Tax Court proceedings entitled "Sam Schnitzer et al v. Commissioner of Internal Revenue", Docket Nos. 14208, 14209, 14278, 14279, 14280 and 14372, reported in 13 T.C. 43, are as shown and contained in the transcript of record No. 12471, which transcript accompanied the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. It is stipulated by the parties that said transcript is a true and correct copy of the pleadings, findings of fact, opinion and decision of the Tax Court in said proceedings, and pertinent testimony and evidence adduced therein, together with the petition for review and per curiam opinion and judgment of the Court of Appeals for the Ninth Circuit. It is further stipulated that said copy of the transcript of the Tax Court proceedings as aforesaid, may be marked and admitted in evidence as "Joint Pre-Trial Exhibit No. 1".

Plaintiff's Contentions

Plaintiff contends as follows:

I.

That since the partnership reported its income on the accrual basis and the sales made to Oregon Electric Steel Rolling Mills were regarded by the partnership as bona fide sales and carried on the books as accounts receivable, the partnership was, as a matter of law, compelled to report the said sales as a part of its gross income and to include

the same as gross income in reporting the distributive shares of the partners and in the net income of the partnership; that the partners were, as a matter of law, compelled to report in their individual income tax returns as income, the amount reported by the partnership as their distributive shares which included the income from the sales made to said Oregon Electric Steel Rolling Mills and the individual partners, including Jennie Wolf, did include in her individual income tax return for the year 1943, her distributive share of the income of the partnership as it was reported by the partnership in its information return, which included income from the sales to Oregon Electric Steel Rolling Mills as aforesaid, and Jennie Wolf paid the income taxes and victory taxes due thereon; that since the Commissioner of Internal Revenue disallowed the loss resulting from the failure of the Oregon Electric Steel Rolling Mills to pay said account receivable for the merchandise sold to it as aforesaid, and the Commissioner elected to treat the delivery of the merchandise by the partnership to said corporation as a contribution to capital of the corporation, and determined a deficiency by reason of the disallowance of said bad debt loss deduction, and the Court affirmed the determination of the Commissioner, the payment of taxes on the portion of the income determined to be capital contribution, was erroneous and resulted in an overpayment in that the delivery of said merchandise by the partnership to the said corporation could not be sales and capital contributions at the same

time, and since said delivery of merchandise would not constitute sales, it was improperly included in the net income and the taxes paid thereon were erroneously paid.

II.

This action to recover the taxes erroneously paid as aforesaid, is not barred by Section 322(c) of the Internal Revenue Code, but comes within the provision of Subdivision 2 of the exceptions to Section 322(c) of the Internal Revenue Code, in that the amount collected was in excess of the amount computed in accordance with the decision of the Board (Tax Court); that the claim for refund did not accrue until after the affirmance of the Commissioner's determination by the Courts and the payment of the deficiency determined thereby, and the Tax Court of the United States had no jurisdiction, referred to herein, to determine any refund, either in the original decision or in the judgment entered upon the computation under Rule 50.

III.

The judgment of the Tax Court of the United States is not *res adjudicata* in that the subject matter of the proceeding in the Tax Court of the United States was not the same as in this action and the proceedings in the two cases were between different parties. The Tax Court of the United States had no jurisdiction under the pleadings in that proceeding to determine the present claim for refund.

Defendant's Contentions

I.

This Action is Barred by Section 322(c) of the Internal Revenue Code of 1939.

The present suit involves the same tax for the same taxable year 1943 as was involved in the proceedings instituted by the plaintiff and related taxpayers before the Tax Court of the United States for redetermination of the deficiency in respect of their income tax for that taxable year.

Under the circumstances this action is barred by Section 322(c) of the Code. With certain exceptions not applicable here, the statute expressly provides that when a petition is filed with the Tax Court, which was the case here, no suit shall be instituted in any court for recovery of any part of "the tax for the taxable year" in respect of which the Commissioner of Internal Revenue has determined a deficiency.

The important thing with this statute is the filing of a petition in the Tax Court, rather than the decision of the Court. The taxpayer who elects to invoke the jurisdiction of the Tax Court must accept this consequence, and it is clear under the decided cases that the plaintiff has no right to sue the United States in this case.

II.

The Determination of the Tax Court Is Res
Judicata

In the alternative, if this Court does not con-

sider that Section 322(c) of the 1939 Code effectively bars this action, then it is barred by an application of the principles of *res judicata*. The same tax liability, the same tax year, and the same parties or their privies are involved in the instant suit as in the prior adjudication.

Upon hearing the same matter in the prior proceedings, the Tax Court decided the issues raised by the pleadings in favor of the Commissioner of Internal Revenue and promulgated its findings of fact and its opinion on July 14, 1949 (13 T.C. 43). The Court withheld entry of its final order and decision, pursuant to Rule 50 of its Rules of Practice, for the purpose of permitting the parties to submit computations of the proper tax liability pursuant to the Court's opinion.

The Commissioner filed his computation on October 6, 1949, showing a total liability of \$42,273.99 due and owing by the transferees of the Estate of Jennie Wolf, deceased. The plaintiff, one of the transferees of said Estate, along with the other transferees, had ample opportunity under Rule 50 to present their objections to the Commissioner's computation of their tax liability in accordance with the Court's opinion.

Instead of objecting to the Commissioner's computation, plaintiff and the other transferees of the Estate of Jennie Wolf, deceased, acquiesced on November 7, 1949, in the computation submitted to the Court by the Commissioner, and the Court entered its order and decision accordingly on November 9, 1949. This final order and decision, determining a

deficiency of \$42,273.99 due and owing by said Estate, was affirmed on January 4, 1950, by the Court of Appeals for the Ninth Circuit (183 F.2d 70).

It is now too late, it is submitted, for the plaintiff and the other taxpayers to ask that any errors in the Rule 50 computation be corrected. The decision of the Tax Court which was affirmed by the Court of Appeals for this Circuit is a final decision which set at rest forever all questions litigated or which might have been litigated.

The plaintiff, it is submitted, has already clearly had his day in Court, and should not be permitted to relitigate the same issues in this Court, as a plain matter of justice and equity.

III.

Plaintiff's Recovery is Properly Denied on Grounds of Estoppel.

In the alternative, if this Court does not consider that Section 322(c) and/or the principle of res judicata effectively barred this action, then it is contended that the plaintiff is estopped by the decision of the Tax Court and by her acquiescence in the computation of the tax deficiency so ordered and decided by the Tax Court, as aforesaid, from any recovery herein.

Issues of Fact

There are no issues of fact for determination.

Issues of Law

I.

Whether this action is barred by Section 322(c) of the Internal Revenue Code of 1939, because of the prior proceedings instituted before the Tax Court of the United States under the provisions of Section 272(a) of said Code?

II.

Whether, in the alternative, the decision of the Tax Court of the United States, affirmed by the Court of Appeals for the Ninth Circuit, is *res judicata* upon a suit for the recovery of any part of the tax paid in satisfaction of the deficiency in tax so determined in the Tax Court proceedings?

III.

Which of the computations set forth in paragraph XXV of this Pre-Trial Order is applicable under the circumstances in the event the Court shall determine that this action is not barred under Section 322(c) of the Internal Revenue Code of 1939 or by the principle of *res judicata*, that is, whether the amount of overpayment is \$39,075.29, as contended by the plaintiff and the other transferees of the Estate of Jennie Wolf, deceased, or \$24,487.71 as contended by the defendant?

Plaintiff's Exhibits

Plaintiff's Exhibit No. 1: Claim for Refund.

Defendant's Exhibits

Defendant's Exhibit No. 1: Computation, Acquiescence and Decision.

Joint Exhibits

Joint Exhibit No. 1: Transcript of the Record in Tax Court proceedings titled: "Sam Schnitzer et al v. Commissioner of Internal Revenue, Docket Nos. 14208, 14209, 14278, 14279, 14280, 14372.

Certain exhibits have been identified and received as pre-trial exhibits, the parties agreeing, with the approval of the Court, that no further identification of said exhibits is necessary and it is stipulated that said exhibits shall be received in evidence as a part of the stipulated facts.

The Parties hereto waive trial by jury and agree to the foregoing Pre-Trial Order and stipulate that this action shall be submitted to the Court for determination upon this Pre-Trial Order and the stipulated facts set forth therein.

The Court being fully advised in the premises; now

Orders, that the foregoing Pre-Trial Order shall not be amended except by consent of both Parties or to prevent manifest injustice; and it is further

Ordered, that this Pre-Trial Order supersedes all pleadings.

Dated at Portland, Oregon, this 28th day of February, 1955.

/s/ GUS J. SOLOMON,
Judge

Approved:

/s/ S. J. Bischoff

/s/ R. S. Jacob

Attorneys for Plaintiff

/s/ C. E. Luckey

Attorney for Defendant

/s/ John D. Picco

Of Counsel for Defendant

[Endorsed]: Filed Feb. 28, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having duly come on for trial, plaintiff appeared herein by S. J. Bischoff, his Attorney, the defendant appeared herein by C. E. Luckey, United States Attorney for the District of Oregon, and by John D. Picco, its attorneys; whereupon the cause was submitted to the Court upon a stipulation of facts contained in the Pre-trial Order entered herein on the 28th day of February, 1955, and upon the exhibits described therein, briefs of the respective parties were submitted and argument made to the Court, the Court now makes and files herein the following:

Findings of Fact

The Court does hereby adopt, and makes as its findings of fact, all of the facts contained in the

stipulation of the parties incorporated in the aforesaid Pre-trial Order as if herein fully and at length set forth.

Upon the aforesaid findings of fact, the Court does hereby make and file herein the following:

Conclusions of Law

I.

That the claim for refund filed by the plaintiff and described in the findings of fact is not barred by the provisions of Section 322(c) of the Internal Revenue Code and the Court has jurisdiction of this suit upon said claim by virtue of the exception No. 2 to Section 322(c) of the Internal Revenue Code.

II.

The plaintiff's cause of action is not barred by the principles of res judicata or collateral estoppel.

III.

In computing the amount of refund to which plaintiff is entitled, there should be eliminated the cost of merchandise sold and delivered to Oregon Electric Steel Rolling Mills and the costs of sales reported in the original return should be reduced by the actual cost of the merchandise sold and delivered to Oregon Electric Steel Rolling Mills.

IV.

Plaintiff is entitled to a judgment against the defendant for the sum of \$13,025.09 with interest

thereon at the rate of 6% per annum from December 30, 1949, to the date of payment as required by law, together with her costs and disbursements incurred herein.

Dated: August 19, 1955.

/s/ CLAUDE McCOLLOCH,
Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed Aug. 19, 1955.

In the District Court of the United States for the
District of Oregon

Civil No. 7100

CHARLOTTE C. COHON, Transferee of the Es-
tate of Jennie Wolf, Deceased, Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

Upon the findings of fact and conclusions of law duly made and filed herein, it is

Ordered and Adjudged that the plaintiff, Charlotte C. Cohon, Transferee of the Estate of Jennie Wolf, deceased, do have judgment for and recover of and from The United States of America, the defendant herein, the sum of \$13,025.09 with interest thereon at the rate of 6% per annum from December 30, 1949, to date of payment as required by law,

and that plaintiff have judgment for her costs and disbursements incurred herein in the sum of \$. as taxed by the Clerk of this Court.

Dated: August 19, 1955.

/s/ CLAUDE McCOLLOCH,
Judge

Acknowledgment of Service attached.

[Endorsed]: Filed August 19, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Charlotte C. Cohon, Transferee of the Estate of Jennie Wolf, Deceased, Plaintiff, and to Jacob, Jones & Brown and S. J. Bischoff, her Attorneys:

Notice is hereby given that the United States of America, defendant above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on August 19, 1955 in favor of plaintiff and against defendant.

Dated: October 14, 1955.

C. E. LUCKEY,
U. S. Attorney, District of Oregon
/s/ VICTOR E. HARR,
Asst. U. S. Attorney,
Of Attorneys for Defendant

[Endorsed]: Filed October 14, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Defendant's motion to dismiss complaint; Order consolidating cases for hearing; Record of hearing on motion to dismiss complaint; Answer; Stipulation for entry of order consolidating actions for trial; Pre-trial order; Findings of fact and conclusions of law; Judgment; Notice of appeal; Motion for order extending time to docket appeal; Order extending time to docket appeal; Designation of contents of record on appeal; and Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7100, in which The United States of America is the defendant and the appellant and Charlotte C. Cohon, Transferee of the estate of Jennie Wolf, deceased, is the plaintiff and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my

hand and affixed the seal of said court in Portland, in said District, this 25th day of January, 1956.

[Seal]

R. DE MOTT,

Clerk.

/s/ By THORA LUND,

Deputy.

[Endorsed]: No. 15014. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Charlotte C. Cohon, Transferee of the Estate of Jennie Wolf, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: January 26, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 15011

United States of America, Appellant, vs. Monte L.
Wolf, Executor of the Estate of Harry J. Wolf,
Deceased, Appellee.

No. 15012

United States of America, Appellant, vs. Monte L.
Wolf, Transferee of the Estate of Jennie Wolf,
Deceased, Appellee.

No. 15013

United States of America, Appellant, vs. Blossom
M. Grayson, Transferee of the Estate of Jennie
Wolf, Deceased, Appellee.

No. 15014

United States of America, Appellant, vs. Charlotte
C. Cohon, Transferee of the Estate of Jennie
Wolf, Deceased, Appellee.

No. 15015

United States of America, Appellant, vs. Manuel
Schnitzer, Harold Schnitzer, Leonard Schnitzer,
Executors of the Estate of Sam Schnitzer, De-
ceased, Appellees.

MOTION TO CONSOLIDATE CASES FOR
BRIEFS AND HEARING

Comes now the appellant, United States of Amer-
ica, by and through C. E. Luckey, United States
Attorney for the District of Oregon, and Victor E.
Harr, Assistant United States Attorney, and moves
the Court for an order of consolidation of the above-
entitled cases for hearing and determination in the
above-entitled Court, and further that a consolida-

ated brief be permitted to be filed herein in respect to all of the above-entitled causes.

In support of this motion appellant represents that the said causes were consolidated for trial and determination in the court below and that the record submitted was considered by the Court as applicable to a determination of each of the said causes; that the said actions all grew out of a consolidated proceeding before the Tax Court of the United States in the case of Sam Schnitzer et al. vs. Commissioner, 13 T.C. 43, and the decision of that Court in that proceeding.

Dated at Portland, Oregon this 1st day of February, 1956.

C. E. LUCKEY,

U. S. Attorney for the District of
Oregon

/s/ VICTOR E. HARR,

Asst. U. S. Attorney

So Ordered:

/s/ WILLIAM DENMAN,

United States Circuit Court Judge

/s/ WM. HEALY,

/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals for
the Ninth Circuit

Certificate of Service by Mail attached.

[Endorsed]: Filed Feb. 6, 1956. Paul P. O'Brien,
Clerk.